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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,340	02/17/2004	Neil S. Cutshall	60117-106	9233
85943	7590	12/17/2009	EXAMINER	
C. Rachal Winger c/o OCIP Group 1900 Main Street Suite 600 Irvine, CA 92614-7319			DESAI, RITA J	
			ART UNIT	PAPER NUMBER
			1625	
			NOTIFICATION DATE	DELIVERY MODE
			12/17/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

seattle.patents@klgates.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,340	<b>Applicant(s)</b> CUTSHALL ET AL.	
	<b>Examiner</b> Rita J. Desai	<b>Art Unit</b> 1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30, 41-45, 47, 48, 50-53, 55 and 56 is/are pending in the application.
- 4a) Of the above claim(s) 1-30, 43 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41, 42, 45, 47, 48 and 50-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Claims 41,42,45,47, 48, 50-53.55,56. are under consideration.

Claims 31-40, 46, 49, 54, 51-50 are cancelled..

Claims 1-30, 43 and 44 are withdrawn.

Response to the arguments:-

The rejection under 35 USC 112 new matter has been withdrawn as the specifications do have data for the IL-8 and GRO activity in the tables given in the specifications.

The obvious type double patenting rejection over US 7151112 and US 6,777,432 still stands.

Applicant arguments that their compounds are the oxides is not convincing.

Prior art English abstract of SU 539878 , 1976 teaches that the compounds which are similar in structure but oxides are also antipsychotic (CNS)

Also compounds in English abstract AN 1978:15765 which discloses the N –oxides are anti-inflammatory drugs.

Thus one of skill in the art would have expected that the “oxide” compounds of US 7151112 and US 6,777,432 would retain its

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properties.

CaplusAN1978:15765.

AB Thirteen pyridine carboxylic acid derive. (I) were prepd. and tested for antiinflammatory, antipyretic, and analgesic effects in rats and mice. All compts. tested inhibited kaolin- or formalin-induced swelling, and no relation existed between the position of the carboxyl group in the ph residue and antiinflammatory effectiveness. Substitution of NH at 2 with O decreased antiinflammatory activity. Isonicotinic acid deriva. consg. a carbomethoxy group had the greatest antipyretic and analgesic activities. LD50 values were given for all compts.

AN 1978:15765 CAPLUS

DN 88:18765

TI Antiinflammatory activity of some new pyridine carboxylic acid derivatives

AD Klabanov, E. M.; Kyabukha, T. K.; Porchysagina, V. A.; Danilenko, V. P.; Gotsman, G. A.

CS Kiev. Nauchno-Issled. Inst. Farmakol. Toksikol., Kiev, USSR

SO Fiziologicheskii Aktivnyi Veshchestva (1977), 2, 17-19

COEN: PAVQAL; ISSN: 0513-1353

DI Journal

LA Russian

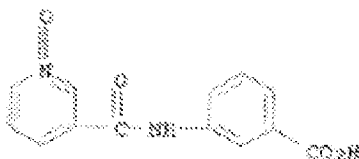
ST 62833-95-8

EW: SAC (Biological activity or effector, except adverse); BSU (Biological study, unclassified); THU (Therapeutic use); BICL (Biological study); USES (Uses)

(pharmacol. of)

EN 62833-95-8 CAPLUS

CH Benzoic acid, 1-[[1-(1-oxido-3-pyridinyl)carbonyl]amino]- (SCI) (CA INDEX NAME)



The declaration is not convincing as it does not show any side by side comparison. Both the specifications and the patents have data given by \*\* and the examiner cannot compare the activity, they appear to be the same.

Thus the ODP rejections still stand.

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The rejection under 35 USC 102 has been withdrawn as applicants have deleted R5 to be H.

However R5 can be alkyl and it would be obvious to try and modify the compound by substituting the H to an alkyl and expect the properties to remain the same.

The rejection is now converted to a 103.

***Conclusion***

Claims 41,42,45,47, 48, 50-53 , 55, 56 stand rejected.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rita J. Desai whose telephone number is 571-272-0684. The examiner can normally be reached on Monday - Friday, flex time..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rita J. Desai/  
Primary Examiner, Art Unit 1625

December 10, 2009